

2003 DRAFTING REQUEST

Bill

Received: **09/19/2003**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Reference Bureau**

By/Representing: **PJK**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Insurance - miscellaneous**

Extra Copies: **CMH**

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Revisions to insurance security fund

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 09/25/2003	csicilia 10/15/2003		_____			
/P1			jfrantze 10/16/2003	_____	mbarman 10/16/2003		
/P2	pkahler 10/27/2003	csicilia 10/29/2003	rschluet 10/29/2003	_____	lnorthro 10/29/2003		

FE Sent For:

<END>

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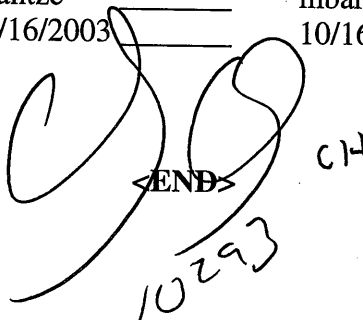
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/P1			jfrantze 10/16/2003		mbarman 10/16/2003		

FE Sent For:



Handwritten signature and initials. The signature is a large, stylized 'J' or 'G' shape. Below it, the word 'END' is written in a box. To the right of the signature, the initials 'CH' are written. Below the signature, the date '10/29/03' is written.

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FE Sent For:

10/15
03

<END>

Kahler, Pam

From: Noreen Parrett [Nparrett@GKLAW.COM]
Sent: Monday, August 18, 2003 2:48 PM
To: Pam.Kahler@legis.state.wi.us
Cc: MarkWISF@aol.com; Eileen.Mallow@oci.state.wi.us; Fred.Nepple@oci.state.wi.us; guenther.ruch@oci.state.wi.us; Jim.Guidry@oci.state.wi.us; Randy.Blumer@oci.state.wi.us; eenglund@tds.net
Subject: Ch. 646 Amendments



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181812_1.DOC

We're back, Pam. Attached is my cover memorandum and a brief analysis of the ch. 646 amendments. Eric Englund should have already sent via email to Eileen O'Neill a draft of the actual ch. 646 amendments.

Please let me know if you have any questions on any of the language or if you'd like to get together and discuss. The plan is to include these amendments in the OCI's bill.

Noreen J. Parrett
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An Office of Godfrey & Kahn. S.C.

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MEMORANDUM

TO: Legislative Reference Bureau – Pam Kahler
FROM: Noreen Parreett
DATE: August 15, 2003
RE: Proposed Amendments to Ch. 646

Pam, at Fred Nepple's suggestion, attached is an explanation of the changes to ch. 646 that will become a part of the OCI's legislation. Most, although not all, of the changes are the amendments for which you did a first draft during the 2001/02 session and much of the drafting work that you did has been retained in the amendments just submitted to the LRB this session. The attached explanation addresses each section of ch. 646 on which amendment is proposed.

My understanding from Fred is that the OCI has signed off on the draft amendments. Ultimately, the goal is to include the ch. 646 amendments in the OCI's bill about which Fred Nepple wrote to you on August 8.

Please call should you have any questions on any of the language.

cc: Fred Nepple
Eileen Mallow
Guenther Ruch
Steve Caughill
Mark Femal
Eric Englund

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Explanation of Chapter 646 Proposed Amendments

Generally

In general, amends Wisconsin's guaranty fund law to conform more to the guaranty fund laws of other states for ease of administration when more than one state guaranty fund is involved. Also clarifies the duties and obligations of the Fund's board of directors vis-à-vis the Fund itself, assigning to the Fund the operational and payment duties and obligations and to the board of directors overall management responsibility.

Section 646.01(1)(a)2.k. and l.

Clarifies that ch. 646 does not apply to insurance residual market mechanisms under chs. 619, 149 and 655.

Section 646.01(1)(a)3.

Clarifies that reinsurance contracts under which assumption reinsurance certificates have been issued are considered direct insurance and subject to ch. 646 and conforms this section with current sec. 646.31(2)(a)1 with regard to coverage of the claims of ch. 612 companies against their reinsurers.

Section 646.01(1)(b)1.

Clarifies that ch. 646 does not apply to the nonguaranteed portions of a policy or contract or any portion of a policy or contract where the risk is borne by the policyholder.

Section 646.01(1)(b)9.

Deletes a. through d. of current law as extraneous. Retains the exclusion for any part of a policy, contract or plan that is self-funded, self-insured or uninsured, regardless of what the policy, contract or plan is called.

Section 646.01(1)(b)11.

Clarifies that ch. 646 does not apply to warranty or service contracts nor to contractual liability policies written on warrantors, warranty plans, warranty plan administrators or service contracts.

Section 646.01(1)(b)15.

Clarifies that ch. 646 does not apply to unallocated annuity contracts.

Section 646.01(1)(b)16.

Clarifies that ch. 646 does not apply to synthetic guaranteed investment contracts.

Section 646.01(1)(b)17.

Conforms the treatment of equity indexed products with other policies and contracts covered by ch. 646.

Section 646.01(1)(b)18.

Excludes the deductible, self-insured, or uninsured portions of contracts regardless of the method for payment by the insured of the deductible, self-insured, or uninsured portion. The bankruptcy of worker's compensation insured is an exception to the exclusion if bankruptcy occurs prior to the last date for guaranty funds to file claims against the estate.

Section 646.03

Adds definitions for "impaired insurer," "insolvent insurer," owner or policyholder" with respect to a life or disability policy or an annuity contract, and "unallocated annuity contract."

Section 646.11(1)

Clarifies that monies received through subrogation and assignment are a part of the Fund. Also includes a catch-all for any other monies that the Fund may receive.

Section 646.13(2)(d)

Clarifies that the Fund has the power to intervene before any court or agency in any state having jurisdiction over an impaired or insolvent insurer with respect to which the Fund may become obligated if that state's laws permit intervention.

Section 646.13(3)

Changes the date by which all claims must be submitted to the Fund for consideration (the bar date). Under current law, the Fund's bar date is the earlier of the liquidator's bar date or 18 months from the date of liquidation. Under the proposed language, the bar date will be the liquidator's original bar date; but if the liquidator thereafter extends the original bar date, then the Fund's bar date will be the earlier of 18 months from the date of liquidation or the liquidator's extended bar date.

Section 646.16

Subsection (1) provides that deposits held by the commissioner for the benefit of creditors, including policyholders, that were obtained from a company later found to be insolvent and not turned over to the domiciliary liquidator of the insolvent company will be paid to the Fund. The section provides that the Fund keeps the percentage of the deposit due to it as a creditor of the estate and remits the balance to the domiciliary liquidator.

Subsection (2) provides that any monies retained by the Fund under subs. (1) is treated as a distribution of estate assets.

Section 646.31(1)(d)10.

Excludes obligations that do not arise under the express written terms of a policy or contract and gives several examples of the types of obligations that are excluded.

Section 646.31(1)(d)11.

For life, annuity or disability insurance, excludes obligations based on side letters, riders, or other documents that do not meet or comply with applicable policy form filing or approval requirements.

Section 646.31(2)

Makes a number of changes to the "Classes of Claims to be Paid" subsection to clarify which classes of claims are covered by the Fund and to align Wisconsin law with the guaranty fund laws of other states.

Section 646.31(3)

Repeals the Fund's deductible provision.

Section 646.31(6)

Clarifies the collateral source provision.

Section 646.31(10)

Revises the provision on temporary moratoriums to align it with the laws of other states to facilitate the transfer of blocks of life and annuity business to solvent companies.

Section 646.325

Clarifies the provisions on the calculation of net worth and the inclusion of defense costs within the insured's obligations.

Section 646.33(1)

Clarifies the Fund's subrogation rights to facilitate the transfer of blocks of life and health business to solvent insurers.

Section 646.33(2) and (2m)

Clarifies the Fund's rights vis-à-vis a claimant with regard to cooperation and recovery of subrogated amounts.

Section 646.35(2)

Eliminates the distinction of the Fund's continuation of coverage obligations between domestic and foreign insolvent insurers to align Wisconsin law with the laws of other states.

Section 646.35(4)

Gives the Fund the authority under certain circumstances to file distribution plans with the liquidation court in those states where laws permit the Fund's involvement.

Section 646.35(6)

Aligns Wisconsin law with the guaranty fund laws of other states in its limitations on the interest or crediting rates used in calculating life and annuity policy and contract values to facilitate the transfer of blocks of life and annuity business.

Section 646.35(7)

Clarifies that the Fund is not obligated to provide coverage under sec. 646.35 if the guaranty fund of another state also provides coverage.

Section 646.35(8)

Expressly provides the Fund with the option to succeed to the rights and obligations of the insolvent insurer under continuing reinsurance contracts.

Section 646.51

To align Wisconsin law with other states for ease of administration, changes the assessment base from the year preceding the date of liquidation to the year preceding the year in which the Fund board of directors authorizes the assessment. Makes several other technical changes to clarify the application of the assessment cap.

Attachment 3

DRAFT
8/1/03

646.01. Scope and purposes

(1) SCOPE. (a) *General.* This chapter applies to:

1. All kinds and lines of direct insurance, except as provided in par. (b).

2. All insurers authorized to do business in this state except:

a. Fraternal organizations that are not health maintenance organization insurers.

b. Assessable mutuals, including town mutuals.

c. Mutual municipal insurers under s. 611.11(4).

d. Issuers of gift annuities under ch. 615.

e. Limited service health organization insurers.

f. Miscellaneous insurers and motor clubs under ch. 616.

g. State insurance funds under chs. 604 to 607.

h. Risk retention groups.

i. Service insurance corporations that offer only dental or vision care.

j. Nondomestic insurers that have not obtained a certificate of authority to do business in this state and that are doing business under s. 618.41 or 618.42.

✓ k. Risk sharing plans under chs. 619 and 149.

✓ 1. The patients compensation fund under subch. IV of ch. 655.

✓ 3. Direct insurance in par. (a) excludes all policies and contracts of reinsurance except for the following:

✓ a. Reinsurance for which the reinsurer has issued assumption certificates pursuant to the reinsurance policy or contract.

✓ b. As provided in s. 646.31(2)(a) for assessable town mutual companies.

(b) *Exceptions.* This chapter does not apply to any of the following:

✓ 1. ~~The nonguaranteed provisions of annuities and life insurance contracts. A portion of an insurance policy or contract that is not guaranteed by the insurer or under which the risk is borne by the policy or policyholder.~~

2. Title insurance.

3. Surety bonds, fidelity bonds and any other bonding obligations.

4. Bail bonds.

5. Mortgage guaranty, financial guaranty and other forms of insurance offering protection against investment risks.

6. Ocean marine insurance.

7. Credit insurance.

8. Product liability or completed operations liability insurance, and comprehensive general liability including either of these coverages, provided to a risk purchasing group or a member of a risk purchasing group.

✓ 9. Any self-funded, self-insured or partially or wholly uninsured plan of an employer or other person to provide life insurance, annuity or disability benefits to its employees or members to the extent that the plan is self-funded, self-insured or uninsured, ~~including benefits payable by an employer or other person under any of the following:~~

— ✓ a. ~~A multiple employer welfare arrangement as defined in > 29 USC 1002.~~

— ✓ b. ~~A minimum premium group insurance plan.~~

— ✓ c. ~~A stop-loss group insurance plan.~~

— ✓ d. ~~A contract for administrative services only.~~

10. Any liability for dividends or experience rating credits payable after the date of entry of the order of liquidation under an insurance or annuity contract, and any fees or allowances due any person, including the policyholder, in connection with service to or administration of the contract.

✓ 11. Any warranty insurance of warranties or service contracts and any contractual liability policy issued to a warrantor, warranty plan, warranty plan administrator or service contract provider providing coverage of any liability or performance arising out of or in connection with a warranty or service contract.

12. Municipal bond insurance.

13. Any transaction or combination of transactions between a person, including affiliates of such person, and an insurer, including affiliates of such insurer, which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk.

14. A policy issued by an insurer to the department of health and family services under s. 49.45(2)(b)2. to provide prepaid health care to medical assistance recipients.

☒ 15. An unallocated annuity contract.

☒ 16. A contractual agreement that obligates an insurer to provide a book value accounting guarantee for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, neither of which is an affiliate of the insurer.

☒ 17. Any liability under a policy or contract to the extent it provides for interest or other changes in value that are to be determined by the use of an index or other external reference stated in the policy or contract to the extent that such interest or other changes in value have not been credited to the policy or contract as of the date of the entry of the order of liquidation and are subject to forfeiture. If a policy's or contract's interest or other changes in value are credited less frequently than annually, for purposes of determining the values that have been credited and that are not subject to forfeiture, the interest or change in value determined by using the procedures specified in the policy or contract will be credited as if the contractual date of crediting interest or other changes in value was the date of entry of the order of liquidation and will not be subject to forfeiture.

☒ 18. The deductible, self-funded or self-insured portion of a claim under a liability or workers' compensation insurance policy regardless of the timing or method provided in the policy, endorsement, or any other agreement for payment of the deductible, self-funded or self-insured amount by the insured. This subd. does not apply to a worker's compensation policy if the insured under the policy is a debtor under 11 USC § 701, et seq., as of the deadline set by the liquidator for filing claims against the insolvent insurer.

(2) PURPOSES. The purposes of this chapter are:

(a) To maintain public confidence in the promises of insurers by providing a mechanism for protecting insureds from excessive delay and loss in the event of liquidation of insurers and by assessing the cost of such protection among insurers; and

(b) To provide where appropriate for the continuation of protection under policies and supplemental contracts of life insurance, disability insurance and annuities.

646.03. Definitions

In this chapter, unless the context indicates otherwise:

(1) "Board" means the board of directors of the insurance security fund created by s. 646.12.

(2) "Fund" means the insurance security fund created by s. 646.11.

(23m) "Health maintenance organization" has the meaning given under s. 609.01(2).

✓(4) "Impaired insurer" means an insurer subject to this chapter which is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

✓(5) "Insolvent insurer" means an insurer subject to this chapter which is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

(25) "Limited service health organization" has the meaning given in s. 609.01(3).

(36) "Liquidator" includes receiver or conservator.

✓(7) With respect to a life or disability insurance policy or an annuity contract, "owner" or "policyholder" means the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. "Owner" or "policyholder" does not include a person with only a beneficial interest in a policy or contract.

X(8) "Unallocated annuity contract" means an annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate.

646.11. Organization and administration of fund

✓(1) ORGANIZATION. There is created a fund to be known as the "insurance security fund". All insurers subject to this chapter are contributors to the fund as a result of their authority to transact business in this state. The fund shall consist of the following:

✓(a) aAll payments made by insurers under s. 646.51;

✓(b) of tThe earnings resulting from investments under s. 646.21(2) and of t.

✓(c) The amounts recovered under s. 645.72(2) or similar law in the state of domicile of the insolvent insurer.

✓(d) Amounts reimbursed to the fund through its subrogation and assignment rights.

✓(e) and sSuch other moneys as the fund may receive from time to time.

(2) ACCOUNTS. The fund shall be composed of 6 segregated accounts, one for life insurance, one for annuities, one for disability insurance other than policies issued or coverage provided by a health maintenance organization insurer, one for health maintenance organization insurers, one for all other kinds of insurance subject to this chapter and an administrative account.

(3) EXPENSES OF FUND. Necessary expenses of administration of the fund incurred in connection with actual liquidations or with continuation of contracts under s. 646.35 shall be charged to the appropriate account of the fund. All other expenses shall be charged to the administrative account.

(4) LIABILITY. No contributor to the fund or person acting on its behalf is personally liable for any obligations of the fund. The rights of creditors are solely against the assets of the fund.

(5) IMMUNITY. No cause of action of any nature may arise against and no liability may be imposed upon the fund or its agents, employees, directors or contributor insurers, or the commissioner or the commissioner's agents, employees or representatives, for any act or omission by any of them in the performance of their powers and duties under this chapter.

646.12. Administration of the fund

(1) COMPOSITION OF BOARD. (a) *Members.* The fund shall be administered by a board of directors which shall consist of not fewer than 7 nor more than 14 members. The attorney general, the state treasurer and the commissioner are members with full voting rights. Other members shall be chosen from representatives of insurers subject to this chapter under procedures specified by the commissioner by rule, provided that one member is a representative of a service insurance corporation. The rule may provide that, instead of natural persons, specific insurers or associations of insurers may be selected as members of the board and may act through any duly authorized representative.

(b) *Chairperson.* The person to chair the board shall be elected by the members of the board under a rule promulgated by the commissioner.

(2) GENERAL POWERS AND DUTIES. The board shall:

(a) Subject to the commissioner's power to promulgate rules under sub. (1), adopt rules for the administration of this chapter, including delegation of any part of its powers and its own procedures.

(b) Create standing or special committees as needed. A minority of the members of any committee may be persons not members of the board.

(c) Delegate to the committees any of its powers and duties under this chapter, subject to review and reconsideration by the board.

✓(d) Employ or retain the personnel necessary to carry out ~~its~~ the fund's duties and set compensation for the personnel, ~~sue or be sued, make contracts and borrow money necessary to carry out its duties in the most efficient way, including money with which to pay claims under s. 646.31 or to continue coverage under s. 646.35.~~ The board may offer as security for such loans its claims against the liquidator or its power to levy assessments under this chapter. Personnel employed under this paragraph are not employees of the state and are not subject to s. 20.922 or ch. 230.

(e) Advise and make recommendations to the commissioner on any matter related to the possible insolvency of an insurer covered by this chapter, and respond to any reasonable questions presented by the commissioner. Information, recommendations and advice under this subsection are privileged and confidential and are not open to public inspection under s. 19.35(1).

(f) 1. Keep records of all meetings of the fund and of its subcommittees that involve discussions of the activities of the fund in carrying out its powers and duties under this chapter.

✓2. Keep confidential the records under subd. 1 pertaining to specific liquidation proceedings involving an insurer until the termination of the liquidation proceedings or until sooner ordered to make the records public by a court of competent jurisdiction.

✓3. Keep confidential the records under subd. 1 pertaining to specific rehabilitation proceedings involving an insurer unless ordered to make the records public by a court of competent jurisdiction.

(g) Negotiate and contract with any liquidator to achieve the purposes of this chapter.

(h) Perform other acts necessary to achieve the purposes of this chapter.

(3) COMPENSATION. Members of the board and other committee members shall receive no compensation for services but may receive reimbursement for all reasonable and necessary expenses incurred in the performance of their respective duties as directors or as committee members.

✓(4) OTHER POWERS. The ~~board~~ fund may join an organization consisting of one or more entities of other states performing comparable functions, in order to assist the board in carrying out its powers and duties under this chapter and otherwise further the purposes of this chapter.

✓ **646.13. Special duties and powers of the fund ~~board~~ related to loss claims**

✓(1) DUTIES. The ~~board~~ fund shall:

(a) Establish procedures and acceptable forms of proof for eligible claims, which shall correspond as closely as practicable with the corresponding rules under ch. 645.

(b) Stand in the position of the insurer in the investigation, compromise, settlement, denial and payment of claims under s. 646.31 and the defense of 3rd party claims against

✓ insureds, subject to the limitations of s. 645.43. The ~~board~~fund shall consult and cooperate with the liquidator in carrying out these duties.

✓ (2) POWERS. The ~~board~~fund may:

(a) Review settlements, releases and judgments to which the insurer or its insureds were parties to determine the extent to which they may be properly contested.

✓ (b) Exercise with respect to loss claims the powers that the liquidator has with respect to other claims under ch. 645 or similar law in the state of domicile of the insolvent insurer.

✓ (c) With respect to any action against an insurer which is in liquidation, exercise the powers of the liquidator under s. 645.49(1) or similar law in the state of domicile of the insolvent insurer.

✓ (d) Have standing to appear in any liquidation proceedings in this state involving an insurer in liquidation, and have the authority to appear or intervene before a court or agency of any other state having jurisdiction over an impaired or insolvent insurer, in accordance with the laws of that state, with respect to which the fund is or may become obligated or that has jurisdiction over any person or property against which the fund may have subrogation or other rights. Standing shall extend to all matters germane to the powers and duties of the fund, including proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations.

(e) Pursue salvage and subrogation with respect to paid covered claim obligations and retain any amounts recovered.

(f) Appoint and direct legal counsel for the defense of covered claims under insurance policies.

✓ (g) Sue or be sued, make contracts and borrow money necessary to carry out its duties, including money with which to pay claims under s. 646.31 or to continue coverage under s. 646.35. The fund may offer as security for such loans its claims against the liquidator or its power to levy assessments under this chapter.

(3) NO DUTY OR LIABILITY. The ~~board~~fund has no duty or liability with respect to any claim filed as follows:

(a) With the liquidator under s. 645.61 after the original date for filing specified by the liquidator under s. 645.47(2), unless the liquidator determines that the claim is considered to have been timely filed under s. 645.61(2) and the claim participates fully in every distribution to the same extent as other timely filed claims in the same class.

(b) With a liquidator or court under the laws of any other state after the original date for filing specified by the liquidator or court, unless the liquidator or court determines that the claim is considered to have been timely filed under a law substantially similar to s. 645.61(2) and the claim participates fully in every distribution to the same extent as other timely filed claims in the same class.

(c) Except for claims under life insurance policies, annuities and noncancelable or guaranteed renewable disability insurance policies and except for claims determined to be excused late filings as provided in pars. (a) and (b), if the date for filing in pars. (a) and (b) is extended by the liquidator or court, with a liquidator or court after the earlier of the following:

1. Eighteen months after the order of liquidation is entered.

2. ~~The final~~Any extended date for filing specified by the liquidator or court.

(4) WHEN DUTY TO DEFEND TERMINATES. Any obligation of the boardfund to defend an insured ceases upon the boardfund's payment, by settlement releasing the insured or on a judgment, of an amount equal to the lesser of the boardfund's covered claim obligation limit or the applicable policy limit, subject to any express policy terms regarding tender of limits.

646.15. Proceedings involving nondomestic insurers

(1) INJUNCTIONS AND ORDERS. (a) If a nondomestic an insurer is in liquidation, the boardfund may apply to the circuit court for Dane county for, and the court may grant, restraining orders, temporary and permanent injunctions, and other orders considered necessary and proper to prevent any of the following:

1. Interference with the boardfund or with its administrative proceedings.

2. The institution or further prosecution of any action or proceeding involving the insurer or in which the boardfund is obligated to defend a party.

3. The obtaining of a preference, judgment, garnishment or lien against the insurer or its assets.

4. Any other threatened or contemplated action that might prejudice the rights of policyholders or the administration of the liquidation or boardfund proceedings.

(b) Upon granting an application under par. (a), the court may retain jurisdiction of any further proceeding or relief, as the court considers necessary and proper, involving the insurer.

(2) EXCLUSIVE PROCEEDINGS. A court of this state does not have jurisdiction to entertain, hear or determine a proceeding or to grant relief if the proceeding or relief involves or is related to a nondomestic insurer which is in liquidation unless the court is so authorized under this chapter or ch. 645.

646.16 Payment of deposits made for benefit of creditors.

(1) The commissioner shall promptly pay to the fund any deposit held in this state that was paid, as required by law or the commissioner, by the insolvent insurer for the benefit of creditors, including policyholders, and not turned over to the domiciliary liquidator upon the entry of a final order of liquidation of an insurer domiciled in this state or in a reciprocal state. Of the amount paid to the fund under this section, the fund may retain the percentage determined by dividing the aggregate amount of policyholders' claims that are related to the insolvency and for which the fund has provided benefits under this chapter by the aggregate amount of all policyholders' claims in this state that are related to the insolvency. The fund shall remit the balance to the domiciliary liquidator.

(2) Any amount retained by the fund under sub. (1) shall be treated as a distribution of estate assets under s. 645.72 or a similar provision of the state of domicile of the insolvent insurer. Deposits subject to this section shall not be treated as deposits as security, escrow, or other security under s. 645.03(1)(j).

646.21. Custody and investment of assets

(1) CUSTODY. Except as provided in sub. (2), the board controls the assets of the fund. The board shall select regulated financial institutions in this state which receive deposits in which to establish and maintain accounts for assets needed on a current basis. If practicable, the accounts shall earn interest.

(2) INVESTMENT OF ASSETS. The board may request that assets of the fund not needed currently be invested by the investment board under s. 25.17. If so requested, the investment board shall invest those assets in investments with maturities and liquidity appropriate to the probable needs of the fund for money to perform its duties. All income attributable to the investments shall be credited to the fund, and both income and principal shall be transferred to the board of the fund on request of the board. Assets held by the board of the fund shall be invested in a similar manner.

646.31. Eligible claims

(1) CONDITIONS OF ELIGIBILITY. A claim is not eligible for payment from the fund unless it is an unpaid claim for a loss insured under the policy or annuity and all of the following conditions are met:

(a) *Issued by authorized insurer.* The claim arises out of an insurance policy or annuity issued by an insurer which was authorized to do business in this state either at the time the policy or annuity was issued or when the insured event occurred, and against which an order of liquidation, which is not stayed, has been entered by a court of competent jurisdiction in the insurer's domiciliary state.

(b) *Assessability of insurer.* The claim arises out of business not exempt from assessment under s. 646.01(1).

(c) *Contact with state.* The claim is a member of one of the classes of claims under sub. (2).

(cm) *Termination of coverage.* Except for claims under life insurance policies, annuities or noncancelable or guaranteed renewable disability insurance policies, the claim arises within 30 days after the order of liquidation is entered or before any of the following occur:

1. The policy expires, if the expiration date is less than 30 days after the order of liquidation is entered.

2. The insured replaces or cancels the policy, if either action is taken within 30 days after the order of liquidation is entered.

(d) *Exceptions.* The claim is not any of the following:

1. Based solely on a judgment.

2. Made for interest on any claim.

3. Made under s. 645.63(2).

4. Subordinated under s. 645.90.

5. An indemnification recovered as a voidable preference under s. 645.54(1)(c).

6. Made by an affiliate of an insurer in liquidation.

7. A retrospective premium rate adjustment.

8. Made for health care costs, as defined in s. 609.01 (1j), for which an enrollee, as defined in s. 609.01 (1d), or policyholder of a health maintenance organization insurer is not liable under ss. 609.91 to 609.935.

9. Made for health care costs, as defined in s. 609.01 (1j), for which an enrollee, as defined in s. 609.01 (1d), or policyholder of a health maintenance organization is not liable for any reason.

10. Based on an obligation that does not arise under the express written terms of the policy or contract, including any of the following:

a. A claim based on marketing materials.

b. A claim based on misrepresentations regarding policy benefits.

c. An extra-contractual claim, including a claim for punitive or exemplary damages.

d. A claim for multiple damages.

e. A claim for penalties or consequential or incidental damages.

f. A claim for bad faith damages.

11. In the case of a life insurance, annuity, or disability insurance contract, based on side letters, riders, or other documents that do not meet or comply with applicable policy form filing or approval requirements.

(2) CLASSES OF CLAIMS TO BE PAID. No claim may be paid under this chapter unless the claim is in one of the following classes:

(a) *Residents.* 1. The claim of a policyholder, including a ceding assessable domestic insurer ~~which that~~ is organized under ch. 612 and a domestic insurer ~~which that~~ is a bona fide policyholder of the insurer in liquidation, who ~~at the time of the insured event or of the liquidation order was is~~ a resident of this state under subsec. (13).

2. Except for a claim of a beneficiary, assignee, or payee under a life or disability insurance policy or annuity contract, the claim of an insured, including a certificate holder, under a policy or annuity contract who at the time of the insured event or of the liquidation order was is a resident of this state under subsec. (13).

~~(b) Certain nonresidents. 1. Except with regard to claims under contracts that are held by residents of a state that does not provide substantially equivalent coverage with regard to contracts of residents of this state, the claim is made under a life or disability insurance policy or annuity contract subject to this section and issued by a domestic insurer, whether or not the claimant is a resident of this state.~~

~~2.(b) Certain nonresidents.~~ The claim is made under a life or disability insurance policy or annuity contract subject to this section and issued by a domestic insurer if all of the following conditions are met:

—— a. The and the claimant is a resident of another state that provides coverage similar to the coverage provided under this chapter but does not provide coverage for the claimant because the insurer was not licensed in that state at the time specified as a requirement for coverage under that state's guaranty association law.

b. ~~The insurer never held a license or certificate of authority in the state in which the claimant resides.~~

3. The claim is made before January 1, 1990, under a life or disability insurance policy or annuity contract subject to this section and issued by a domestic insurer if all of the following conditions are met:

~~a. The claimant was a resident of this state when the policy or contract was issued.~~

~~b. The claimant is a resident of a state which does not provide coverage similar to the coverage provided under this chapter.~~

(c) *Owners of property interests.* The first-party claim of a person having an insurable interest in or related to property with a permanent location in this state at the time of the insured event.

(d) *Third party claimants.* A claim under a liability or workers' compensation insurance policy, if either the insured or the 3rd party claimant was a resident of this state at the time of the insured event.

(e) *Assignees.* The claim of a direct or indirect resident assignee, other than an insurer, of a person who except for the assignment could have claimed under par. (a), (b), (c) or (d).

(f) *Beneficiaries, assignees and payees; life or disability policy or annuity contract.* Except for a claim of a nonresident certificate holder under a group policy or contract, a claim made under a life or disability insurance policy or annuity contract by a resident or nonresident beneficiary, assignee or payee of a person who fulfills all of the following criteria:

1. The person is a policyholder of, or a certificate holder under, the life or disability insurance policy or annuity contract.

2. The person is a resident of this state or could have made a claim under par. (b)2.

(g) *Payees; structured settlement annuity.* 1. Notwithstanding par. (f), the claim of a payee, or of a beneficiary of a deceased payee, under a structured settlement annuity if the payee, or deceased payee's beneficiary, is a resident of this state, regardless of where the policyholder of the structured settlement annuity resides.

2. Notwithstanding pars. (b) and (f), the claim of a payee, or of a beneficiary of a deceased payee, under a structured settlement annuity if the payee, or deceased payee's beneficiary, is not a resident of this state, if neither the payee, or deceased payee's beneficiary, nor the policyholder of the structured settlement annuity is eligible for coverage by an organization that is comparable to the fund in the state of which the payee, or deceased payee's beneficiary, or the policyholder is a resident, and if either of the following applies:

a. The policyholder is a resident of this state.

b. The policyholder is not a resident of this state, but the insurer that issued the structured settlement annuity is domiciled in this state, and the state in which the policyholder resides has an organization that is comparable to the fund.

~~(3) Deductible. (a) In this subsection, "health insurance policy" does not include a policy providing income continuation coverage or benefits for loss of time.~~

~~— (am) Except as provided in pars. (b) and (c), payment under this chapter is limited to the amount by which the claim exceeds \$200. Claims may not be aggregated by assignment or otherwise for application of this deductible.~~

~~— (b) With regard to contracts subject to s. 646.35(2) or (3) other than health insurance policies, in lieu of the deductible under par. (am), the board may impose a deductible not to exceed the lesser of 10% or \$200 on any claim or other benefit payment if the board deems the imposition of this deductible more equitable or practical than that under par. (am).~~

~~— (c) A claim or other benefit payment under this chapter that is made under a health insurance policy may not be subject to the deductible under par. (am) or (b).~~

(4) MAXIMUM CLAIM. (a) Except in regard to worker's compensation insurance and except as provided in par. (b), the obligation of the fund on a single risk, loss or life may not exceed \$300,000.

(b) The fund is not obligated to pay a claimant an amount in excess of the loss obligation of the insurer in liquidation under the policy or coverage from which the claim arises.

~~(5) PUNITIVE DAMAGES. No punitive damages may be paid out of the fund.~~

(6) COLLECTION FROM COLLATERAL SOURCES. (a) The portion of an otherwise eligible loss claim for which indemnification is provided by other benefits or advantages, which may not be included in the classes of claims specified in s. 645.68, may not be claimed from the fund under this chapter or from the insured or policyholder. The claimant must exhaust such collateral sources before pursuing payment from the fund. This paragraph does not apply to the claim of an insured or payee under a structured settlement annuity.

(b) The boardfund may waive the application of par. (a) to claims under contracts subject to s. 646.35(2) or (3), to the extent that the boardfund determines that application of par. (a) would be impracticable.

(c) Any person having an eligible claim which also constitutes a claim or legal right of recovery under any governmental insurance or guaranty program shall first exhaust all rights under that program, and any amount payable on an eligible claim under this chapter shall be reduced by the amount of recovery under that program.

(7) SETOFFS AND COUNTERCLAIMS. Section 645.56 applies to the settlement of loss claims. The boardfund shall give the liquidator a reasonable opportunity to inform the boardfund of possible setoffs and counterclaims before paying loss claims.

(8) NOTICE TO CLAIMANTS. The ~~board~~fund shall provide notice under s. 645.47(2) to those potential loss claimants to whom the fund is liable under the section, if the liquidator has not done so.

(9) COLLECTION FROM OTHER FUNDS. A claim recoverable from more than one security fund shall be paid in the following order:

(a) By any security fund with an obligation to pay all loss claims of the insurer;

(b) If it is a first party claim for damage to property with a permanent location, by the fund of the location of the property;

(c) If it is a workers' compensation claim, by the fund of the residence of the claimant;

(d) In any other case, by the fund of the residence of the insured. If the claim is not eligible for payment from the fund of the residence of the insured, then the claim is not eligible for payment from the fund under this chapter; and

(e) Any other funds liable to pay.

(9m) RECOVERY REDUCTION. Any recovery under this chapter shall be reduced by the amount of recovery from any other security fund.

(10) TEMPORARY MORATORIUMS. Before being obligated to make payments under this chapter to holders of life insurance or annuity contracts the fund may impose, with court approval, ~~temporary~~ any of the following:

(a) ~~Temporary moratoriums of not more than 90 days on payments of cash values and policy loans in addition to any deferrals of cash or policy loan value by contractual provision. A temporary moratorium may be renewed for successive periods of not more than 90 days with court approval or~~ liens on payments of cash values and policy loans, or on any other right to withdraw funds held in conjunction with those policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value. If the court imposes a temporary moratorium or a moratorium charge on the payment of cash values or policy loans out of the assets of the insolvent insurer, or on any other right to withdraw, out of those assets, funds held in conjunction with those policies or contracts, the fund may defer the payment of cash values and policy loans and other rights to withdraw funds for the period of the moratorium or moratorium charge imposed by the court, except for any claims covered by the fund to be paid in accordance with a hardship procedure established by the liquidator and approved by the court.

(b) Permanent policy or contract liens in connection with a guarantee, assumption, or reinsurance agreement, if the board finds that the amounts that may be assessed under this chapter are insufficient to ensure full and prompt performance of the fund's duties under this chapter, or that economic or financial conditions, as they affect insurers, are such that imposing such permanent policy or contract liens is in the public interest.

(11) SUBROGATION CLAIMS. The fund is not required to pay any amount due from the insurer to any reinsurer, insurer, insurance pool or underwriting association as subrogation, contribution, or indemnification recoveries or otherwise, except as provided in sub. (2)(a). A reinsurer, insurer, insurance pool or underwriting association that has paid a claim and thereby has become subrogated or otherwise entitled to the amount of that claim may assert that claim against the liquidator of the insurer in liquidation but not against the insured of the insurer in liquidation.

(12) NET WORTH OF INSURED. Except for claims under s. 646.35, payment of a first-party claim under this chapter to an insured whose net worth, as defined in s. 646.325(1), exceeds \$10,000,000 is limited to the amount by which the aggregate of the insured's claims that satisfy subs. (1) to (7), (9) and (9m) plus the amount, if any, recovered from the insured under s. 646.325 exceeds 10% of the insured's net worth.

(13) RESIDENCY. For purposes of determining residency in this section, ~~the:~~

(a) The residency of a claimant, insured or policyholder that is not a natural person is the state in which the claimant's, insured's or policyholder's principal place of business is located.

(b) In the case of a life or disability insurance policy or an annuity contract, residency means residency at the time of the liquidation order. In the case of any other kind of insurance covered by this chapter, residency means residency at the time of the insured event.

(c) A person's residency may be in only one state.

(d) If a person who is a citizen of the United States is a resident of a foreign country, or of a possession, territory, or protectorate of the United States, that does not have an organization similar to the fund, the person's residency is the domicile of the insurer that issued the policy or contract.

646.32. Appeal and review

(1) APPEAL. A claimant whose claim is reduced or declared ineligible shall promptly be given notice of the determination and of the right to object under this section. The claimant may appeal to the board within 30 days after the mailing of the notice. The claimant may not pursue the claim in court except as provided in sub. (2).

(2) REVIEW. Decisions of the board under sub. (1) are subject to judicial review.

646.325. Recovery of amounts paid to 3rd parties

(1) DEFINITION. In this section, "net worth" means the amount of an insured's total assets less the insured's total liabilities at the end of the insured's fiscal year immediately preceding the date the liquidation order was entered, as shown on the insured's audited financial statement, or, if the insured is a natural person, the insured's total assets less the insured's total liabilities on December 31 immediately preceding the date the liquidation order was entered. "Net worth"

refers to the consolidated net worth of all of the corporate affiliates, subsidiaries, operating divisions, holding companies and parent entities that are shown as insureds or additional insureds on the policy issued by the insurer.

(2) RECOVERY FROM CERTAIN INSURED AND AFFILIATES. Except as provided in sub. (3), the fund may recover from a person the costs and expenses incurred in defending a claim against the person by a 3rd party and the amount of any claim paid on behalf of that person to a 3rd party, if all of the following conditions are satisfied:

(a) The person on whose behalf the claim was defended or paid is any of the following:

1. An insured whose net worth exceeds \$10,000,000.
2. An affiliate of the insurer in liquidation.

(b) Adjudication of the claim resulted in no liability obligations upon the person to pay the claim of the 3rd party or Ppayment of the claim satisfied all or part of the person's liability obligations to 3rd parties.

(3) LIMITATION. The total amount recovered from an insured described in sub. (2)(a)1 plus the amount of the insured's claims that satisfy s. 646.31(1) to (7), (9) and (9m) but are not eligible for payment under s. 646.31(12) may not exceed 10% of the insured's net worth.

646.33. Subrogation and cooperation

(1) SUBROGATION. (a) Upon payment to any loss claimant the fund is subrogated to the claimant's full right of recovery against the insurer, and, to the same extent the insurer would have been subrogated, against any liquidator and any 3rd person. A person receiving benefits under this chapter thereby assigns to the fund the person's rights under, and any causes of action against any person for losses arising under, resulting from, or otherwise relating to, the covered policy or contract to the extent of the benefits received, regardless of whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or the provision of substitute or alternative coverages.

(b) The subrogation rights of the fund under this subsection have the same priority against the assets of the insolvent insurer as the claimant's rights with respect to the insurer.

(c) In addition to the rights specified in pars. (a) and (b), the fund has all of the common law rights of subrogation and any other equitable or legal remedy that would have been available to the insolvent insurer or the claimant with respect to the covered policy or contract including, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of the benefits received under this chapter, against a person originally or by succession responsible for the losses that arise from the personal injury and that relate to the annuity or its payment.

(d) If any provision of this subsection is invalid or ineffective for any reason with respect to any person or claim, the amount payable by the fund with respect to the related covered obligations shall be reduced by any amount realized by any other person with respect to the person or claim that is attributable to the covered policy or contract.

~~On recovery under this section, the fund may retain both the amount it has paid to the claimant and the amount it has expended to obtain the recovery and shall pay any balance to the claimant.~~

(2) COOPERATION. The claimant shall cooperate with the ~~board~~ fund in pursuing the fund's rights under sub. (1), including executing any necessary documents. If cooperation is withheld unreasonably, the fund may recover from the claimant any amount it has paid the claimant. The fund may require a claimant to execute a written assignment to it of the claimant's rights and causes of action relating to the covered policy or contract as a condition precedent to the receipt of any right or benefits under this chapter.

(2m) RECOVERY. (a) On recovery under this section, the fund may retain both the amount it has paid to the claimant and the amount it has expended to obtain the recovery and shall pay any balance to the claimant.

(b) If a claimant to whom the fund has provided benefits under this chapter recovers amounts with respect to which the fund has rights under this section, the claimant shall pay to the fund the portion of the recovery that is attributable to the covered policy or contract.

(3) CLAIMS AGAINST LIQUIDATOR. The ~~board~~ fund shall report periodically and whenever a reasonable request is made to any liquidator against whom subrogation rights exist under sub. (1) the claims paid and rejected together with estimates of unsettled claims made or anticipated against the fund.

646.35. Continuation of coverage

(1) SCOPE. This section applies to the following contracts when subject to this chapter:

- (a) Annuities.
- (b) Life insurance.
- (c) Disability insurance.

(2) ~~DOMESTIC INSURER IN LIQUIDATION. -(a) If an domestic insurer subject to this chapter is in liquidation, the board fund shall, subject to sec. 646.31(2), subject to the approval of the commissioner do either of the following:~~

~~(a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, all policies of the insurer within the scope of this section except contracts that are held by residents of a state that does not provide substantially equivalent coverage with regard to contracts of residents of this state other than policies and contracts under s. 646.31(2)(b)3;~~

~~_____ (b) Assure performance of the contractual obligations of the insurer on such policies; and;~~

~~_____ (c) Provide the necessary money or other means necessary to discharge the duties under pars. (a) and (b).~~

(3) NONDOMESTIC INSURER IN LIQUIDATION. If a nondomestic insurer is in liquidation, the board shall, subject to the approval of the commissioner and on a determination by the commissioner that the insurer's domiciliary jurisdiction or state of entry does not provide by statute for protection to residents of this state substantially similar to that provided by this section:

(a1.) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies of residents the insolvent insurer within the scope of this section or;

~~(b2.) Assure performance of the contractual obligations of the insurer on such policies; and.~~

~~(eam) Provide the necessary money~~ Whether the fund's duties under par. (a) are discharged under par. (a)(1) or under par. (a) (2) is at the fund's discretion. The fund shall provide moneys, pledges, loans, notes, guarantees, or other means reasonably necessary to discharge the duties under pars. (a) and (b)par. (a) 1. or 2.

(4) CLAIMS AGAINST LIQUIDATOR. (a) The fund has a claim against the liquidator for reasonable payments made to discharge its duties under this section. If the ~~board~~fund and the liquidator disagree regarding the reasonableness of such payments, either may apply to the court to determine the question. Such payments shall have the same priority as the class of claims under s. 645.68(3).

~~(b) As creditors of the insolvent insurer, the fund shall be entitled to receive disbursements of assets out of marshaled assets, consistent with s. 645.72 and similar laws of other states, as a credit against obligations under this chapter. If, within 120 days after a final determination of an insurer's insolvency by the receivership court, the liquidator has not applied to the court for approval of a proposal for disbursement of assets out of marshaled assets to insurance guaranty associations having obligations because of the insolvency, the fund has the authority to apply to the receivership court, in accordance with the law of the state of domicile of the insolvent insurer, for approval of its own proposal for disbursement of the assets.~~

(5) RATE INCREASES. The ~~board~~fund may increase any rates or premiums on policies during continuation of coverage under sub. (2)(~~ba~~)2 or (3)(~~ba~~)2 to the extent the policies permit the insurer to increase the rates or premiums. If the ~~board~~fund determines that the rates or premiums on policies ~~which~~that do not permit an increase or the rates or premiums as increased to the extent permitted by the policies are inadequate under s. 625.11(3), the ~~board~~fund may offer the policyholders the option of terminating the coverage or continuing the coverage at adequate rates or premiums as determined by the ~~board~~fund.

(6) LIMITATIONS. In performing its duties under this section:

(a) In the case of an annuity contract, the boardfund may limit its performance to payment of the then current value of the loss claim under s. 645.68(3) as of the date of the order of liquidation, with interest to the date of payment, in lieu of the requirements of sub. (2) or (3).

(b) In the case of a disability insurance policy which is neither guaranteed renewable nor noncancelable, the boardfund is not obligated to continue the policy in force beyond the time required under s. 645.43 or the date established in the liquidation order of another state, but may continue the coverage under any disability insurance policy for up to 180 days after the date of the liquidation order. ~~The commissioner may adopt rules defining "guaranteed renewable" and "noncancelable" for the purposes of this paragraph.~~

(bm) For coverages continued pursuant to par. (b), the boardfund may substitute a comprehensive health insurance policy approved by the commissioner for a health maintenance organization policy that is subject to sub. (2) or (3), and increase rates or premiums for the substituted coverage as provided in sub. (5).

(c) In the case of a life insurance or annuity contract, the boardfund is not obligated to perform the responsibilities set forth in sub. (2) or (3) with respect to either of the following:

1. Any benefit payment liability, arising on or after the date of entry of the order of liquidation, to the extent that ~~the payment is based upon a rate of interest that~~ rate of interest on which it is based or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract and employed in calculating returns or changes in value exceeds the larger~~smaller~~ of the following:

a. The minimum guaranteed rate specified in the contract.

b. The rate of interest (which shall not be less than zero) determined by subtracting 3 percentage points from the monthly corporate bond yield average, as most recently published by Moody's investors service or its successor ~~and as adjusted on a monthly basis.~~

2. Any benefit payment liability, arising before the date of entry of the order of liquidation, to the extent that ~~the payment is based upon a rate of interest that~~ exceeds the larger~~smaller~~ of the following:

a. The minimum guaranteed rate specified in the contract.

b. The rate of interest (which shall not be less than zero) determined by subtracting 2 percentage points from the monthly corporate bond yield average, as published by Moody's investors service or its successor, when averaged ~~for over~~ the 4-year period ending on the date the ~~fund becomes obligated with respect to the contract~~ of entry of the order of liquidation or averaged ~~for over~~ such lesser period if the contract was issued less than 4 years before that date.

(7) EXCLUSION FOR COVERAGE UNDER ANOTHER FUND. (a) Notwithstanding s. 646.31(9), the fund shall not provide coverage under this section to any person who, directly or indirectly, has coverage under any other state's security fund statutes.

(b) In determining whether par. (a) applies in a situation in which a person could potentially be covered by security funds of more than one state, par. (a) shall be construed in conjunction with other states' laws in such a manner as to result in coverage for the person by only one security fund.

(8) REINSURANCE. (a) In this subsection, "coverage date" means the date on which the fund becomes responsible for the obligations of an insolvent insurer.

(b) At any time within one year after the coverage date, the fund may elect to succeed to the insolvent insurer's rights and obligations that accrue on or after the coverage date and that relate to contracts covered, in whole or in part, by the fund under one or more indemnity reinsurance agreements entered into by the insolvent insurer as a ceding insurer and selected by the fund. The election shall be effected by a notice to the liquidator and to any affected reinsurer. The fund may not exercise an election under this paragraph with respect to a reinsurance agreement that the liquidator has expressly disaffirmed.

(c) With respect to each indemnity reinsurance agreement for which the fund makes an election under par. (b):

1. The fund shall be responsible for all unpaid premiums under the agreement, for periods both before and after the coverage date, and for the performance of all other obligations to be performed under the agreement after the coverage date, that relate in each case to contracts covered, in whole or in part, by the fund. The fund may charge contracts covered in part by the fund, through reasonable allocation methods, for the costs of reinsurance in excess of the obligations of the fund.

2. The fund is entitled to any amounts payable by the reinsurer under the agreement with respect to losses or events that occur in periods after the coverage date and that relate to contracts or contractual obligations covered, in whole or in part, by the fund. Upon receipt of any such amounts, the fund must pay to the beneficiary under the policy or contract on account of which the amounts were paid, the amount by which the benefits paid by the fund on account of the policy or contract less the retention of the insolvent insurer applicable to the loss or event is exceeded by the amount received by the fund.

3. Within 30 days after the election, the fund and the indemnity reinsurer must calculate the net balance due to or from the fund under the agreement as of the date of the election, giving full credit to all items paid by the insolvent insurer, the insurer's liquidator, and the indemnity reinsurer between the coverage date and the date of the election. The fund or the indemnity reinsurer shall pay the net balance due to the other within 5 days after the calculation is completed. The liquidator shall remit to the fund as promptly as practicable any amounts received by the liquidator that are due the fund under subd. 2.

4. If, within 60 days of the election, the fund pays all premiums due for periods both before and after the coverage date that relate to contracts covered, in whole or in part, by the fund, the reinsurer may not terminate the agreement insofar as it relates to contracts covered, in whole or in part, by the fund and may not set off against amounts due the fund any unpaid premium due for periods before the coverage date.

(d) If the fund transfers its obligations to another insurer and the fund and other insurer agree, unless the fund has previously expressly determined in writing that it will not exercise an election under par. (b), the other insurer succeeds to the rights and obligations of the fund under pars. (b) and (c), regardless of whether the fund has exercised an election under par. (b). If the other insurer succeeds to the fund's rights and obligations under pars. (b) and (c):

1. The indemnity reinsurance agreements automatically terminate for new reinsurance, unless the indemnity reinsurer and the other insurer agree to the contrary.

2. On and after the date on which an indemnity reinsurance agreement is transferred to the other insurer, the fund is no longer obligated to pay beneficiaries the amounts specified in par. (c) 2. with respect to that agreement.

(e) This subsection supersedes s. 645.58(1), any applicable regulations thereunder, and the provisions of any affected reinsurance agreement that provide for or require payment of reinsurance proceeds to the liquidator of the insolvent insurer on account of losses or events that occur after the coverage date. The liquidator remains entitled to any amounts payable by the reinsurer under the reinsurance agreement with respect to losses or events that occur before the coverage date, subject to any applicable setoff provisions.

(f) Nothing in this subsection, except as expressly provided in this subsection:

1. Alters or modifies the terms or conditions of the indemnity reinsurance agreements of the insolvent insurer.

2. Abrogates or limits any rights of any reinsurer to rescind a reinsurance agreement.

3. Gives a policy owner or beneficiary an independent cause of action against an indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance agreement.

(9) COVERAGE OBLIGATIONS. Notwithstanding subs. (2) and (3), in performing its obligations to provide coverage under this section, the fund is not required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed, reinsured, or performed, the contractual obligations of an insolvent insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

(10) BOARD DETERMINATIONS. The board shall have discretion to determine the means by which the fund provides benefits under this section and may provide such benefits in the most economical and efficient manner. If the board has arranged or offered to provide benefits to a person under a plan or arrangement that fulfills the fund's obligations under this section, the

person is not entitled to any benefits from the fund in addition to or other than those provided under the plan or arrangement.

646.41. Tax exemption

The fund is exempt from payment of all fees and taxes levied by this state or any of its subdivisions or instrumentalities, except for fees and taxes levied by virtue of employment under s. 646.12(2)(d).

646.51. Assessments

(1c) DEFINITIONS. In this section:

(a) "Authorize" means, with respect to an assessment, the board has adopted a resolution approving an assessment from insurers for a specified amount to be called immediately or in the future. An assessment is authorized when the resolution is adopted by the board.

(b) "Call" means, with respect to an assessment, that the fund has issued a notice to insurers requiring that an authorized assessment be paid within the time set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the fund to insurers.

(c) "Premiums" means gross premiums and other considerations received for direct insurance and annuities, including considerations for a plan established under ss. 185.981 to 185.985, less return premiums and other considerations, dividends and experience credits paid or credited to policyholders on such business. The term "premiums" does not include premiums or other considerations received for policies or contracts, or for portions of policies or contracts, for which coverage is not provided under this chapter, except that the amount of assessable premiums or other considerations shall not be reduced on account of limitations with respect to a single risk, loss, or life under s. 646.31(4) or on account of interest limitations under s. 646.35(6)(c).

(1m) DUTY TO ASSESS. As soon as practicable after a liquidation order has been issued, the board shall estimate separately for each of the accounts of s. 646.11(2), the amounts necessary to make the payments provided by this chapter and shall order authorize assessments separately for each account.

(2) Exemptions from assessments. If the commissioner finds that a nondomestic insurer is subject to another security fund law providing substantially the same protection to claimants as would be provided by s. 646.31 or 646.35 and that under the law of the other jurisdiction would have a prior obligation to pay those claims or assume those obligations, the commissioner shall exempt the insurer from the assessments on the classes of business to which the other law applies.

(3) Calculation. (a) General. 1. In this section, "premiums" means gross premiums and other considerations received for direct insurance and annuities, including considerations for a

plan established under ss. 185.981 to 185.985, less return premiums and other considerations, dividends and experience credits paid or credited to policyholders on the direct business. The term "premiums" does not include any amounts received for any contracts or for the portions of any contracts for which coverage is excluded under s. 646.01(1)(b).

2(3)(a). Except as provided in pars. (b) and (c), assessments shall be calculated as follows: a percentage of premiums written in this state by each insurer in the classes protected by the account, for the year preceding the year of entry of the order of liquidation.

(b) Continuation of coverage. 1. Assessments to provide protection under s. 646.35(2) shall for each account be made separately for each state in which the domestic insurer in liquidation was authorized to transact business at any time, excluding every state that does not provide substantially equivalent coverage with regard to contracts of residents of this state. The assessment attributable to each state shall be in the proportion that the average annual premiums the insurer received on business in that state on policies covered by the account for 3 years preceding the year of the liquidation order, bears to the average annual premiums it received in all such states in that period. Assessments against insurers shall be in the proportion that those premiums received on business in each such state by each assessed insurer on contracts covered by each account bears to such premiums received on business in each state by all assessed insurers.

2. Assessments to provide protection under s. 646.35(3) shall be calculated as a percentage of average annual premiums received in this state by each insurer in the classes protected by the account for the 3 years preceding the year of entry of the order of liquidation.

1. For assessments authorized by the board prior to [effective date of act], as a percentage of premium written in this state by each insurer in the classes protected by the accounts for the year preceding the year of the entry of the order of liquidation.

2. For assessments authorized by the board on or after [effective date of act], as a percentage of premium written in this state by each insurer in the classes protected by the accounts for the year preceding the year in which the assessment is authorized by the board.

(c) ADMINISTRATIVE ASSESSMENTS. The board may make authorize assessments on a prorated or nonprorated basis to meet administrative costs and other expenses whether or not related to the liquidation or rehabilitation of a particular insurer. Nonprorated assessments may not exceed \$200 per insurer in any year.

(4) LIMITS. The maximum assessment under this section in any calendar year is 2% of the assessable premiums under sub. (3). If the maximum assessment does not enable the fund to meet its obligations, an additional assessment shall be made in each succeeding year until the amounts available enable the fund to meet its obligations. No assessment may be levied if the assets held in the appropriate account of the fund are sufficient to cover all estimated payments for liquidations in progress.

(a) Subject to par. (b), the total of all assessments for an amount authorized by the board under this section with respect to an insurer may not, in one calendar year, exceed 2% of the insurer's average annual premiums received in this state during the 3 calendar years preceding the year of entry of the order of liquidation on the types of policies and contracts that are covered by the account.

(b) If the maximum assessment under par. (a), together with the other assets of the fund in an account, does not provide in one year in the account an amount that is sufficient for the fund to meet its obligations, the board shall assess additional amounts in each succeeding year until the amounts available enable the fund to meet its obligations.

(c) Assessments to meet the obligations of the fund with respect to an insurer in liquidation may not be authorized or called unless the board makes a finding that it is necessary for implementing the purposes of this chapter. Recognizing that exact determinations may not always be possible, the board shall endeavor to classify and calculate assessments with a reasonable degree of accuracy. No authorized assessment may be called if the assets held in the appropriate account of the fund are sufficient to cover all estimated payments for liquidations in progress.

(d) If 2 or more assessments are authorized in one calendar year with respect to insurers placed in liquidation in different calendar years, the average annual premiums for purposes of the limitation in par. (a) shall be equal and limited to the higher of the 3-year annual premium average for the applicable account.

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(5) COLLECT. After the rate of assessment has been fixed, the ~~board~~fund shall send to each insurer a statement of the amount it is to pay. The ~~board~~fund shall designate whether the assessments shall be made payable in one sum or in ~~instalments~~installments. Assessments shall be collected by the same procedures as premium taxes or license fees under ch. 76.

(6) APPEAL AND REVIEW. Within 30 days after the ~~board~~fund sends the statement under sub. (5), an insurer, after paying the assessment under protest, may appeal the assessment to the board or a committee thereof. The decision of the board on the appeal is subject to judicial review.

(7) RECOUPMENT OR TAX CREDIT. (a) An insurer's premium rates are not excessive because they contain an amount reasonably calculated to recoup assessments ~~made~~called under this chapter.

(b) If the premium rates on a class of business are fixed, so that it is not possible for an insurer to recoup its assessments by increasing premium rates on the class of business, the insurer may offset 20% of the amount of the Wisconsin portion of the assessment against its tax liabilities to this state, other than real property taxes, in each of the 5 calendar years following the year in which the assessment was paid.

(c) If an insurer ceases doing business in this state, all assessments not yet offset may be offset against its tax liabilities to this state for the year it ceases doing business. If the offset

exceeds the tax liabilities, no refund will be made and there will be no carry-forward of the deficit to later years.

(d) Any amount available for credit against future tax liabilities under this subsection may be regarded as an asset of the insurer under rules promulgated by the commissioner.

(8) ABATEMENT AND DEFERRAL. The board may abate or defer the assessment of an insurer in whole or part if payment of the assessment would endanger the ability of the insurer to fulfill its contractual obligations. The amount by which an assessment is abated or deferred may be assessed under this section against other insurers. When the conditions that prompted the board to defer assessment of an insurer no longer exist, the insurer shall pay all assessments that were deferred in accordance with a repayment plan approved by the board.

(9) OBLIGATION TO CONTRIBUTE CEASES. (a) Except as provided in par. (b), if an insurer's license or certificate of authority to do business in this state terminates or expires, the insurer's obligation to pay assessments under this section ceases beginning on the day after the insurer's license or certificate of authority terminates or expires.

(b) An insurer whose license or certificate of authority to do business in this state terminates or expires remains liable after the termination or expiration to pay all of the following:

1. Assessments ~~made~~authorized or called before the insurer's license or certificate of authority terminated or expired.

2. Assessments ~~made~~authorized or called after the insurer's license or certificate of authority terminated or expired that relate to a liquidation order entered before the insurer's license or certificate of authority terminated or expired.

646.60. Claims by security funds

(1) RECOGNITION. (a) *Settlements by the fund.* The liquidator is bound by determinations and settlements of covered loss claims, and by payments of claims, made by the ~~board~~fund under this chapter.

(b) *Settlements by comparable funds.* The liquidator is bound by determinations and settlements of covered loss claims, and by payments of claims, made by funds or organizations of other states that are comparable to the fund under this chapter if all of the following apply:

1. The laws of the other states give equivalent recognition to the determinations and settlements of loss claims, and to payments of claims, made by the fund.

2. If the same claim is reported as paid by 2 or more funds, payment shall be to the fund with a prior obligation under s. 646.31(9).

(2) PRIORITIES. The subrogation claims of funds under sub. (1) for settlements of claims, including expenses in settling them, have the priority the claims would have under s. 645.68.

646.61. Disposal and transfer of assets

(1) After termination of all liquidations under any account of s. 646.11(2), remaining assets in that account shall be redistributed among those who paid assessments under rules promulgated to ensure treatment that is as equitable to the contributing insurers as is practicable. Partial distributions may be made to insurers who were assessed after all claims against the fund arising from such liquidations have been paid.

(2) To meet the needs of the fund the ~~board~~fund may temporarily transfer assets from one account to another.

646.73. Liquidations to which the chapter is applicable

~~This chapter applies in full to all liquidations commenced after February 16, 1980. For each liquidation in process on February 16, 1980 the board shall apply to the court which issued the liquidation order for an order specifying the extent to which this chapter, 1979 stats., applies to that liquidation. The court shall apply this chapter, 1979 stats., to the maximum extent possible without affecting vested rights or creating serious administrative difficulties.~~

Initial applicability.

(1) This act first applies to liquidation proceedings in which a liquidation order is issued on the effective date of this subsection.